



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1993

Mr. Dick Stengel
Attorney at Law
P.O. Box 1504
El Paso, Texas 79948

OR93-103

Dear Mr. Stengel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18468.

The Socorro Independent School District (the "school district"), which you represent, has received a request for information regarding the school district's employee screening procedures. Specifically, the requestor seeks seven categories of information:

- 1 - What screening procedures does the SISD employ when evaluating prospective employees?
- 2 - Specifically, what sort of checks of criminal and/or civil-action (such as lawsuits) history are performed?
- 3 - How many prospective employees have been rejected because of information turned up by those checks in the past 10 years?
- 4 - Are the standards different for people already employed by the district when they become involved in criminal or civil matters? That is, would a current employee be kept on his or her job when a similar alleged offense would disqualify a person seeking new employment?
- 5 - Is there any distinction made between alleged criminal activities in a campus setting and activities elsewhere in the community? Are there different levels of discipline?

6 - Does the district currently employ anyone who has been charged and/or convicted of a felony? If so, please specify the person and charge.

7 - Does the district currently employ anyone who has been charged and/or convicted of a Class A misdemeanor or any misdemeanor assault charge?

You advise us that the school district has provided information responsive to questions 1, 2, 4, and 5 and that the school district is not in possession of information responsive to question 3.¹ You object, however, to release of information responsive to questions 6 and 7, which you have submitted to us for review, claiming that this information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with state statute and the doctrine of common law privacy.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 21.917 of the Texas Education Code authorizes school districts to obtain criminal history record information for purposes of evaluating employment applicants. Section 21.917 also provides, in pertinent part:

(f) Criminal history record information obtained under this section is privileged information and is for the use of the district and the Central Education Agency only. A person commits an offense if the person releases or discloses the information to any person other than to the subject of the report, the Central Education Agency, or to the chief personnel officer of a public or commercial transportation company as provided by Subsection (h) of this section. An offense under this section is a Class A misdemeanor.

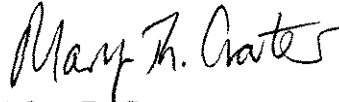
We assume that the school district obtained the information submitted to us for review under section 21.917. We conclude, therefore, that it must be withheld from required public disclosure in its entirety under section 3(a)(1) of the Open Records Act.²

¹The Open Records Act does not require a governmental body to make available information which does not exist, Open Records Decision No. 362 (1983), or to prepare information it does not possess, Open Records Decision Nos. 572, 558 (1990). In addition, the Open Records Act does not require a governmental body to prepare answers to general inquiries. Open Records Decision No. 555 (1990).

²Because we find that the requested information is excepted from required public disclosure under section 21.917 of the Texas Education Code, we do not reach the question as to whether it is protected by the doctrine of common-law privacy.

Because section 21.917 of the Education Code resolves your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-103.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/le

Ref.: ID# 18468
ID# 18677

cc: Mr. Leon Lynn
Education Reporter
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